

Remarks

I. Status

Following entry of the amendments included herein, claims 19, 20, 22-24, and 33-35 and 37-38 are pending, with claims 1-18, 21, 25-32, and 36 cancelled, with claims 19, 24, 33-35, and 37 amended herein and claims 38-47 added herein. Support for the amendment to claims 33-35 is found at least in the claims of the application as filed, as well as in the original specification at page 31, lines 4-10. Support for the amendment of claims 19 and 24, and for addition of claims 38-47 is found at least in pages 6-7, 26-29, 31 (including paragraphs 1 through 3 on that page), and 33 (lines 15-28) of the application as filed.

The sequence identification listing is also amended herein. No new matter is added. The amended sequence identification listing is also included in its entirety in computer readable form. The sequence identification listing in computer readable form is the same as the amended sequence identification listing that has been submitted on paper in this application. Entry of the enclosed complete sequence identification listing in computer readable form is hereby requested.

II. Objections

The Office Action objects to the sequence listing for showing the nucleic acid sequence "at" translated to the amino acid isoleucine. The sequence listing has been amended so that it no longer reflects translation to isoleucine as translated by "at." Withdrawal of the objection is requested.

The claims also stand objected to because certain of the claims are believed identical. Following entry of the amendment herein, the claims are clearly not identical. Withdrawal of the objection is requested.

III. Claim Rejections - 35 U.S.C. § 102

Claims 19, 20, 22, and 33-35 stand rejected under 35 U.S.C. § 102 as allegedly anticipated by Peter, *et al.* (*J. Bacteriol.*, 1996), "as evidenced by" Pisabarro, *et al.* (*J. Bacteriol.* 1993). The Office Action contends that Peter, *et al.*, teach the isolation of genomic DNA comprising the polynucleotide molecule of SEQ ID NO: 18, encoding the amino acid sequence of SEQ ID NO: 19. The Office Action argues that the correlation of SEQ ID NOs: 18 and 19 with the genomic DNA purportedly isolated by Peter is proven by Pisabarro, *et al.* The Office Action concludes that Peter therefore include all of the limitations of claims 19, 20, and 33-35.

The rejection over Peter is improper and should be withdrawn. It is well-established that for a reference to anticipate a claim, all of the limitations of that claim must be taught or suggested by the reference. Peter does not teach or suggest SEQ ID NOs: 1, 2, 18 and 19, and it does not teach their combination. Pisabarro, does not remedy this infirmity in Peter, *et al.*, at least because there is no indication that the sequence as deduced in Pisabarro was the same sequence present in Peter. Pisabarro also fails to teach or suggest SEQ ID NOs: 1 or 2.

Even if the sequence in Pisabarro were sufficient to remedy Peter's inability to teach SEQ ID NOs: 1, 2, 18 and 19, Peter would still not teach all of the limitations of the claims. Claims 19 and 33 and their dependent claims all require an "isolated" polynucleotide. Even if Peter were otherwise sufficient, there is no support in Peter for these limitations.

Claims 19-20, 22, 24, 33-35, and 37 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Pisabarro, *et al.*, in view of Labarre, *et al.* and Hirano, *et al.* The Office Action cites Pisabarro, *et al.*, for the proposition that "it is likely that ORF2 is also translated in *Corynebacteria* in lysine biosynthesis." Labarre, *et al.* is cited for a "reliable and general method" for inserting genes into a chromosome of *Corynebacterium*. Hirano, *et al.* is cited for

noting that "L-lysine productivity" can be "obtained by the means of amplification of genes for the L-lysine biosynthesis."

The claims, as amended, are not obvious in light of Pisabarro. A claim can not be made obvious in light of a reference or combination of references if that reference or combination of references fails to teach or suggest all of the limitations of the claims. Pisabarro, Labarre, and Hirano all fail to teach the limitations of the amended claims. Those claims depending from amended claim 19 all require "a nucleotide sequence encoding the polypeptide sequence of SEQ ID NO: 2." This is neither taught nor suggested by the cited documents. Such a nucleotide sequence is exemplified by SEQ ID NO: 1, which is also not taught or suggested by the cited documents.

Applicants note that claims to SEQ ID NO:1 and SEQ ID NO:2 were previously allowed in the parent of this case, United States Patent No. 6,927,046. If those sequences alone are novel, then nucleotide sequences containing those sequences and additional sequences are necessarily also novel.

Those claims depending from claim 33 are also novel and nonobvious. Pisabarro and the other cited documents do not teach or suggest the polypeptide consisting of the amino acid sequence of SEQ ID NO: 19, wherein the polynucleotide molecule is integrated into the chromosome of a cell of the genus *Corynebacterium*. Because the cited documents do not teach or suggest all of the elements of the claims, there is no *prima facie* case of obviousness. The rejection should be withdrawn and the claims allowed.

For at least the reasons given, no *prima facie* case of obviousness has been created. Applicants request that the rejection be removed, and that the claims be reconsidered and allowed.

CONCLUSION

Applicants believe that a full and complete response to the outstanding office action has been made herein. The Examiner is invited to telephone the undersigned at the number provided below if further discussion of the claims could result in allowance. Consideration and early allowance of all of the pending claims is respectfully requested.

Respectfully submitted,

/Duane A. Stewart III/

Dated: September 16, 2008

Duane A. Stewart III  
Registration No. 54,468  
BUCHANAN INGERSOLL & ROONEY PC  
One Oxford Centre  
301 Grant Street  
Pittsburgh, Pennsylvania 15219  
ph: (412) 562-1622  
fx: (412) 562-1041